

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1931 OF 2005**

Smt Geeta Tanaji Kamble & Anr. ...Appellants
Vs.
The Union of India ...Respondent

Mr G.M. Mohanrao for the Appellants.
None for the Respondent.

**CORAM : A. S. OKA, J.
DATE : APRIL 04, 2006.**

P.C.:

1. On 08th March, 2006 notice was ordered to be issued to the Respondent for final hearing of the Appeal at admission stage. Office noting shows that notice is served and the Respondent is represented by an Advocate.

2. The Appellants are the original claimants who filed a claim before the Railway Claims Tribunal claiming compensation on account of death of the son of the Appellant No.1 as a result of accidental fall from a running local train near Malad Railway Station. The Claim Petition has been dismissed by the learned Members of the Railway Tribunal by observing that it is not stated by the Appellants whether the deceased was married or unmarried and whether the deceased was

financially supporting the Appellants. By making this observation the Tribunal held that the Appellants cannot be termed the dependants of the deceased within meaning of section 123(c) of the Railways Act.

3. The learned Advocate appearing for the Appellants has placed reliance on a decision of this Court dated 22nd November, 2005 in First Appeal No.474 of 2005 (Mahanand Govind Surve & Anr. Vs. The Union of India) . He submitted that the facts of the case in the said decision were almost identical with the facts of the case in the present Appeal. He submitted that an opportunity deserves to be granted to the Appellants to lead evidence to show that the deceased was not married and he was financially supporting the Appellants.

4. I have considered the submissions of the learned Counsel for the Appellants. Considering the fact that Claim Petition filed by the Appellants has been dismissed on the ground that there was no evidence to show that the deceased was unmarried and that he was financially supporting the Appellants, an

opportunity deserves to be granted to the Appellants to go back before the Tribunal and to produce relevant material. Same is the course adopted by this Court in decision dated 22nd November, 2005.

5. Hence, I pass the following order:

- (i) The impugned Judgment and Order dated 15th September, 2005 is quashed and set aside and O.A. No.2002/336 is restored before the Railway Claims Tribunal, Mumbai Bench, Mumbai.
- (ii) The Railway Claims Tribunal will give opportunity to the Appellants to lead evidence.
- (iii) The Claims Tribunal will decide the Claim Petition as expeditiously as possible.
- (iv) All contentions of the parties on merits are kept open.

JUDGE